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AUTHOR Rafferty, Yvonne; Holmes, Ellen Gallagher
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ABSTRACT

This monograph provides an overview of federal laws relevant to the provision of educational services to preschool children with disabilities (as well as additional laws pertaining to children who are homeless) and examines implementation of these laws in New York City. It begins with an overview of federal legislation including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, Chapter 1 of the Elementary and Secondary Education Act, the Head Start Act, and the Stewart B. McKinney Homeless Assistance Act of 1987. The paper also reviews barriers confronting New York City preschoolers with disabilities. Barriers to timely and appropriate identification, evaluation, and placement include failure to solicit parental input, restricted locations of approved evaluation sites, a shortage of bilingual evaluators, inadequate program numbers, and placement of children in segregated programs. Finally, the paper considers barriers confronting preschoolers with disabling conditions who are also homeless. These include inadequate efforts to place homeless preschoolers into available programs, inconsistent application and selection procedures which ignore the transiency associated with homelessness, and failure to identify homeless preschoolers with disabilities due to ineffective or nonexistent outreach. (Contains 36 references.) (DB)

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Preschoolers with Disabilities: Educational Rights and Service Barriers

by Yvonne Rafferty, Ph.D.
Assistant Professor, Department of Psychology, Policy Analyst, The Children's Institute
and
Ellen Gallagher Holmes, Esq.
Director, Inclusive Education Project, Advocates For Children of New York

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For more information, contact:

Dr. Priscilla Denby, Director
The Children's Institute,
Pace University/20A Miller Hill
Bedford Road
Pleasantville, NY 10570
(914) 773-3539

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Preschoolers with Disabilities:

Educational Rights and Service Barriers

Yvonne Rafferty, Ph.D.
Assistant Professor, Department of Psychology
Policy Analyst, The Children's Institute
Pace University
1 Pace Plaza
New York, NY 10038
(212) 346-1506

and

Ellen Gallagher Holmes, Esq.
Director, Inclusive Education Project
Advocates for Children of New York, Inc.
24-16 Bridge Plaza South
Long Island City, NY 11101
(718) 729-8866

ABSTRACT

Preschoolers with disabilities, and especially those who are homeless, confront serious threats to their educational achievement despite noteworthy federal legislation which aims to ensure that they receive a free, appropriate public education in the least restrictive environment, and that they do not suffer discrimination due to their disability or residential status. Sadly, these promises remain illusory for thousands of vulnerable children.

This paper provides an overview of federal laws relevant to the provision of educational services to preschoolers with disabilities, as well as additional laws that pertain to children who are homeless. We also describe the implementation of these laws in New York City. A second goal is to review barriers confronting preschoolers with disabling conditions in New York City, including barriers to timely and appropriate identification, evaluation, and placement. A third goal is to describe additional barriers confronting preschoolers with disabling conditions who are also homeless. Public policy initiatives are sorely needed to ensure that all preschoolers with disabilities are afforded an opportunity to succeed.

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Yvonne Rafferty, Ph.D., Assistant Professor of Psychology, is a policy analyst for The Children's Institute. Her paper coauthored by Ellen Gallagher, *Preschoolers with Disabilities: Educational Rights and Service Barriers* is the first in a series of reports detailing the needs of children. This paper represents a work in progress and research is on-going. If you would like to be kept informed, please contact:

Yvonne Rafferty, Ph.D.
Assistant Professor, Department of Psychology
Policy Analyst, The Children's Institute
Pace University
1 Pace Plaza
New York, NY 10038
(212) 346-1506

Introduction

Preschoolers with disabling conditions confront serious threats to their educational achievement despite important federal protections and programs. Of particular relevance are those established under the Individuals with Disabilities Education Act,[1] Section 504 of the Rehabilitation Act of 1973,[2] Chapter 1 of the Elementary and Secondary Education Act,[3] the Head Start Act,[4] and the Stewart B. McKinney Homeless Assistance Act,[5] Together, these laws aim to ensure that all children with disabilities receive appropriate educational services in the least restrictive environment with their non-disabled peers, and that they do not suffer discrimination due to their disability or residential status.[6] Nevertheless, preschoolers with disabilities, including those who are homeless, are routinely denied access to timely, appropriate programs and/or services.

This paper focuses on the extent to which the educational needs of preschoolers with disabilities, including those who are homeless, are being addressed by the New York City Public Schools. We begin by providing an overview of federal legislation. We then describe the preschool program in New York City and barriers to timely and appropriate identification, evaluation, and placement. Finally, additional barriers confronting homeless preschoolers with disabilities are delineated.

An Overview of Federal Legislation

1. The Individuals with Disabilities Education Act (IDEA)

In 1975, Congress passed the Education for All Handicapped Children Act, (P.L. 94-142), challenging the nation's persistent failure to meet the educational needs of school-age children with disabilities (renamed the Individuals with Disabilities Education Act, or IDEA, in 1990). Under IDEA, children with disabilities are defined as those:

"with mental retardation, hearing impairments including deafness, speech or language

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1 20 U.S.C. Sections 1400-1485 (1990).

2 29 U.S.C. Section 794 (amended 1988).

3 The Elementary and Secondary Education Act (ESEA) (20 U.S.C. Secs. 2701-2796) (1965), reauthorized in April, 1988 as the Augustus F. Hawkins-Robert Stafford Elementary and Secondary School Improvements Act of 1988 (P.L. 100-297).

4 Title V, Economic Opportunity Act of 1964, as amended by the Human Services Reauthorization Act; codified at 42 U.S.C. Sections 9831-9852.

5 Title VII, Subtitle VII-B (1987), (P.L. 100-77); codified at 42 U.S.C. Sections 11301 et seq, (amended 1990, P.L. 101-645).

6 While these laws apply to recipients of federal funding, the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101-12213) stands as the first comprehensive law prohibiting disability discrimination by privately owned public accommodations nationwide. As summarized in the July 13, 1993 Senate Committee Report filed on Goals 2000: Education America (S. 1150), the ADA is an omnibus civil rights law that prohibits discrimination on the basis of disability by, among ...rs, entities providing public and private preschool, elementary and secondary education. ADA thus provides an important tool for children with disabilities to gain access to settings such as day care centers, nursery schools, other social service programs and places of recreation.

impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities... who by reason thereof need special education and related services" [20 U.S.C. Section 1401 (a)(1)].

In October, 1986, Congress expanded the scope of IDEA by enacting Pubic Law 99-457. This landmark legislation was designed to encourage states to plan for the provision of comprehensive early intervention services to infants, toddlers, and preschoolers with developmental delays. P.L.99-457 created two new programs: (a) a mandatory program for preschoolers ages 3 through 5 with developmental delays (the Part B, Section 619 Program); and (b) an optional state grant-in-aid program for infants and toddlers from birth through age two who are already developmentally delayed or who are at risk of becoming so (the Part H, Section 672 Program).[7]

The Part B Program required states to provide appropriate education and related services for all eligible children with disabilities from the age of 3 to 5 by the beginning of the 1991-1992 school year. Thus, IDEA now requires state and local educational agencies to provide a "free appropriate public education" (FAPE) to all children with disabilities who are between the ages of 3 and 21.[8] Towards this end, states and local educational agencies must: (a) identify, locate and evaluate any children in their jurisdiction suspected of being disabled; (b) conduct comprehensive, individual evaluations meeting certain criteria before recommending any child for a special education program and/or services; and (c) provide timely and appropriate services in the least restrictive environment regardless of the nature of the student's disability.

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7 Both P.L. 99-142 and P.L. 99-457 are now encompassed under IDEA (P.L. 101-476, and the subsequent amendments, P.L. 102-119); although when referring to children from birth to age five, P.L. 99-457 is still frequently cited.

8 In Board of Educ. v. Rowley, 458 U.S. 176, 188-89, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), the Supreme Court held that a free, appropriate public education "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction."

For preschoolers, services include the development of an individualized education plan (IEP) containing (a) an annual assessment of the child's strengths and needs, as well as appropriate special education goals; and (b) the provision of necessary special education and "related services" (e.g. speech therapy, physical therapy, counseling). For children served under Part H who may be eligible for Part B preschool services, the 1991 amendments require the Part H lead agency, in conjunction with the state educational agency, to create an effective transition plan (Early Childhood Report, 1992a, page 15).[9]

Parents also gained important procedural safeguards under the Part B Program. For example, parents must be given prior written notice (which is easily understood and in the parents' native language) any time a school system proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child with disabilities (cf. Center for Law and Education, 1989; Ordover & Boundy, 1991).[10] Parents also have the right to inspect and review their child's educational records, and to play an active role in the development and implementation of their child's IEP. Finally, if the parent disagrees on any matter related to the provision of a free appropriate public education for their child, they may request a due process impartial hearing.[11]

In addition to the FAPE requirement, IDEA also mandates that all participating states establish:

> *"procedures to assure that, to the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational*

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9 The Part H lead agency must initiate the transition process no later than 90 days prior to the child's third birthday. For children eligible for special education and related services, an IEP (or IFSP in accordance with 20 U.S.C. 1414(a)(5)) must be developed and implemented by the third birthday.

10 20 U.S.C. Section 1415(b)(1)(c); 34 C.F.R. Section 300.504(a).

11 20 U.S.C. Sections 1415(b)(1)(E) and (b)(2).

environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" [20 U.S.C. Sec. 1412(5)(B)].

Stated differently, this "least restrictive environment" (LRE) requirement means that school districts must first consider placing children with disabilities in general classes, with supplementary aids and services, including classroom assistants, before exploring more restrictive alternatives. No student may be denied placement in a general education class unless it is demonstrated that s/he is unable to benefit from the education therein, even with the provision of necessary supplementary services. Furthermore, such benefit is defined broadly, and includes, at a minimum, potential social, psychological, emotional, and academic gains.[12]

Within the preschool context, the U.S. Department of Education, Office of Special Education Programs (OSEP), has recently clarified the responsibility of school districts to pay for all costs associated with the delivery of specially designed instruction or related services in a variety of settings (including public or private day care programs as well as Head Start programs), if such a placement is determined to be the least restrictive environment for a particular child.[13]

"If the placement team determines that the least restrictive environment requirements of Part B can only be met with a full-day or part-time private preschool placement in which children with and without disabilities are integrated, the public agency is responsible for all costs associated with that placement, regardless of whether single or multiple services are provided" (Letter to Neveldine, 1 ECLPR 318, OSEP, 1993).

2. Section 504 of the Rehabilitation Act of 1973

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12 Several federal district court cases have held that because mainstreaming is a presumptive requirement of federal law, school districts must consider placing children with disabilities in regular classes, with supplementary aids and services, including classroom assistants, ("inclusion") before exploring more restrictive alternatives. See, e.g., Oberti v. Board of Education of the Borough of Clementon School District, 995 F.2d. 1204 (3rd Cir. 1993); Board of Education, Sacramento City Unified School District v. Holland, 786 F. Supp. 874 (E.D. Cal. 1992); and Greer v. Rome City School District, 762 F. Supp. 936, 17 EHLR 881 (N.D.Ga.1990).

13 See e.g. Letter to Neveldine, 1 ECLPR 318 (OSEP, 1993) and Letter to Wessels, 19 IDELR 584 (OSEP, 1992)

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights statute prohibiting discrimination on the basis of physical or mental disability in programs and activities that receive federal financial assistance and mandating the provision of a free, appropriate education in the least restrictive environment for all eligible students. For preschool children, Section 504's implementing regulations provide, in relevant part, that:

> *"A recipient ... that operates a preschool education or day care program or activity ... may not, on the basis of [disability], exclude qualified [disabled] persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity"* [34 C.F.R. Part 104.38].[14]

Under Section 504, a qualified person is one who has a physical or mental impairment which substantially limits one or more major life activities.[15] With respect to public preschool services, the regulations further state that a qualified person means, (i) one who is of an age during which persons without disabilities are provided with such services, or (ii) of any age when it is mandatory under state law to provide such services to persons [with disabilities], or (iii) to whom a state is required to provide a free appropriate public education under IDEA.[16]

While virtually all children who are eligible for special education and related services under IDEA also fall within Section 504's broader mandate, many "medically fragile" children are covered by Section 504 but not IDEA because their conditions are not "educationally disabling" (e.g. asthma, HIV/AIDS). Nevertheless, they may require special accommodations such as the provision of medication or equipment to participate fully in the school classroom or educational environment.

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14 Although Section 504 and its implementing regulations use the term "handicapped," we use the term "disabled" which is consistent with the language incorporated in the amended Individuals with Disabilities Education Act as well as the Americans with Disabilities Act.

15 34 C.F.R. Section 104.3(j)(1)(i). Major life activities include (but are not limited to): caring for one's self, performing manual tasks, seeing, hearing, speaking, breathing, learning and walking.

16 34 C.F.R. Section 104.3(k)(2).

Since preschool children without educational disabilities in New York State are not entitled to special education services, Section 504 is a somewhat limited tool for assuring access to non-IDEA eligible children in the public school system. It is applicable, however, to existing public preschools as well as private preschools, day care settings and other programs or activities receiving federal financial assistance.[17] These entities must comply with the nondiscrimination mandate mentioned above, and so afford qualified children the same opportunities as their nondisabled peers. In other words, if programs receiving federal financial assistance meet the needs of similar age children without disabilities to a greater degree than children qualified under Section 504, discrimination is occurring.

> *"If a school district is meeting the needs of children without disabilities to a greater extent than it is meeting the needs of children with disabilities, discrimination is occurring. By meeting the educational needs of children with disabilities as adequately as it meets the needs of other children, the school district is eliminating discrimination, and even substantial modifications required to bring about this result are not suspect..."* [20 IDELR 134, 137, citing 34 C.F.R. Part 104.4, 104.33(b)].

Despite Section 504's protections, many publicly funded or publicly assisted preschools are unaware of their obligations. In fact, legislation at the state or local level often prohibits these programs from complying with the federal law.[18]

3. Chapter 1 of the Elementary and Secondary Act

Chapter 1 of the Elementary and Secondary Education Act (ESEA) is the largest federal education program. It provides supplemental financial assistance for educationally disadvantaged children who reside in low income school attendance areas. Recipient schools have considerable

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17 29 U.S.C. Section 794(a). Private schools and/or programs that do not receive federal financial assistance may be "public accommodations" subject to the anti-discrimination provisions of the Americans with Disabilities Act of 1990. See Public Law 101-336, Section 301(7)(J), 104 Stat. 327, 354, at 42 U.S.C. Section 12181.

18 See e.g. New York City Human Resources Administration. (August, 1993). Draft Memorandum Regarding Medication Policy and Procedures. Brooklyn, NY: Agency for Child Development.

discretion in how they spend Chapter 1 funds,[19] and such funding may be used to establish and/or help maintain preschool programs. (Early Childhood Report, 1992a, page 7). Chapter 1 funds must provide services for the lowest achieving students; the services must be over and above what these students would receive without the program (otherwise known as the "supplement not supplant requirement"); and the services must adequately raise the achievement level of participating students (cf. Levin, 1993).

Because Chapter 1 is not an entitlement program, not all eligible children receive services. In other words, children who are eligible, but who attend a school or district program that does not receive Chapter 1 funding, are not guaranteed access to Chapter 1 services. However, in the case of homeless children, Chapter 1 funding and services may be used to provide for supplementary services regardless of where they attend school.

In recent years, an increasing number of school districts have utilized Chapter 1 money to support preschool services, especially model programs combining Chapter 1 and Part B special education funds (cf. Early Childhood Report, 1992b; Smith & Rose, 1993). For example, eight districts in New York City offered "Superstart Plus" programs during the 1992-93 school year. These programs served a total of 138 special education and 222 general education preschoolers (New York City Public Schools, 1993). Most classes consist of 8 special education and 10 general education preschoolers.[20] While homeless children are entitled to access such programs, neither New York State nor New York City has been able to provide us with the

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19 Many schools use Chapter 1 money to hire special teachers, aides, and tutors to work with eligible children on reading and math outside the regular classroom. Schools may also use money for preschool, after-school, weekend or summer school programs; extra help within the regular classroom; help in other subjects; training and support of teachers and staff; and new forms of curriculum and instruction. In addition, Chapter 1 funds must pay for parent involvement programs, including training of parents and support for their activities.

20 The Superstart Plus program is funded by Chapter 1 (the 5% available for implementation of innovative projects), the New York State Pre-Kindergarten Program, IDEA (Part B) and tax levy funds.

number of homeless preschoolers in either these or any other preschool program.

4. The Head Start Act

The Economic Opportunity Act of 1964,[21] governs Head Start. This major federal program, designed to assist preschool age children (3-5) from low-income families, includes a comprehensive program of educational, health social, dental, nutritional and mental health services. Clearly, homeless preschoolers, as well as other preschool age children living in poverty, could benefit from this program.

At least 10% of Head Start enrollment in each state must be for children with disabilities.[22] Such children are expected to participate in the full range of Head Start activities with their nondisabled peers, and to receive necessary special education and related services. These services should be delivered consistent with Section 504 and IDEA requirements. Interestingly, only 54% of enrolled children with disabilities receive services from both Head Start and other agencies.[23] In addition, 10% of the children served are required to be homeless.

The United States Department of Health and Human Services recently issued final regulations regarding the provision of services to children with disabilities by Head Start programs. These regulations, which took effect February 22, 1993, require programs to: (a) appoint a coordinator of services for children with disabilities; (b) design comprehensive services

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21 Title V, as amended by the Human Services Reauthorization Act; codified at 42 U.S.C. (Sections 9831-9852).

22 Section 640(d) of the Head Start Act requires that the program uses the same definition of "children with disabilities" found in IDEA. However, many Head Start programs tend to serve children with mild to moderate disabilities only. According to the Department of Health and Human Services, Administration for Children and Families, in FY 1991, Head Start served 70,053 children who were certified by professionals as having disabilities. This constituted 12.9 percent of the total enrollment. See Final Rule on Head Start Services for Children with Disabilities, 45 C.F.R. Parts 1304, 1305, and 1308 (Vol. 58, No. 12 at 5492), January 21, 1993.

23 Id. at 5493.

which meet program standards for locating and serving children with disabilities and their parents; (c) develop an IEP for each identified child and their family; (e) conduct regular screenings to ensure that services may be provided in a timely manner; (f) use revised Head Start diagnostic criteria to determine a child's eligibility for special education and related services; and (g) operate in accordance with current guidance on the use of program funds for special services to children who have disabilities (United States Department of Health and Human Services, 1993). Thus, the new regulations aim to expand Head Start's capacity to serve children presenting the full range of disabilities and to promote better coordination between Head Start, Part B of IDEA and Section 504 programs and services.

5. The Stewart B. McKinney Homeless Assistance Act

The Stewart B. McKinney Homeless Assistance Act of 1987 guarantees homeless children and youth the same access to the nation's public schools as permanently housed children.[24] This noteworthy legislation established a federal policy that states must develop programs to assure that homeless children and youth have the same access to "a free, appropriate public education" as permanently housed children in the community (cf. National Association of State Coordinators for the Education of Homeless Children and Youth, 1991).

Stated differently, states are required to ensure that homeless children receive all of the services, including services provided under other federal programs, that children with established residences receive.[25] For example, if a preschool age child is living temporarily within a school district that offers a preschool program, then that homeless child must be considered

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24 Title VII, Subtitle B (P.L. 100-77) and 1990 Amendment (P.L. 101-645).

25 In addition to the provisions of Subtitle VII-B, other Federal statutes and regulations govern the administration of the program. These include the General Education Provision Act (GEPA), and the EDGAR requirements in Title 34 of the Code of Federal Regulations: Part 74 (Administration of Grants), Part 76 (State Administered Programs), Part 77 (Definitions that apply to Department Regulations), and Part 78 (Education Appeals Board).

eligible for placement in that program. In addition, if permanently housed children are protected under IDEA, Chapter 1, or Head Start, then homeless children must also be afforded the same protections. It also mandates that children who were placed in a preschool program when they lost their permanent home cannot be removed from that program because they no longer reside in the district. Preschoolers with disabling conditions are also entitled to services in either the location of the family's temporary shelter, of in the school district where the family lived in permanent housing.

The McKinney Act does not seek to create a separate education system for homeless children: *"Homelessness alone should not be sufficient reason to separate students from the mainstream school environment"* [Section 721(3)]. Instead, it aims to promote integrating homeless children into existing systems and programs. States are required to gather information on the number and needs of homeless children; to determine the extent to which homeless children are attending school; to identify the barriers preventing homeless children from attending school; and to develop and implement a State Plan to remove barriers and ensure that all homeless children have access to a free public education. It also requires that educational services available to permanently housed residents of the state be made available to homeless children who are eligible.

Particularly noteworthy is the expanded Statement of Policy in the 1990 Amendments mandating that states address <u>any</u> policies or laws that have any impact on educational opportunities for homeless children. Previously, the Act focused only on residency laws. States are now required to review and undertake steps to revise not only residency requirements, but <u>all other barriers</u> to assure that homeless children and youth are afforded a free and appropriate public education.

> *"In any state that has a residency requirement as a component of its compulsory attendance laws, <u>or other laws, regulations, practices, or policies that may act as a</u>*

> *barrier to the enrollment, attendance, or success in school of homeless children and homeless youth, the state will review and undertake steps to revise such laws, regulations, practices, or policies to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education"* [Section 721(2)].

While the initiatives from the McKinney Act have helped homeless children access educational services, much remains to be done. Limitations include noncompliance at the state and federal levels, weak provisions, limited focus, and inadequate funding levels (cf. Rafferty, 1991). In addition, the educational needs of homeless preschoolers are routinely overlooked. For example, only 12 states were able to provide the United States Department of Education with any estimate at all of the number of homeless preschoolers in their state; none provided data on the proportion receiving preschool services (U.S. Department of Education, 1992).

The Preschool Program in New York City

In July, 1989, New York State passed legislation governing all activities associated with the provision of preschool special education.[26] State regulations implementing the law transferred responsibility for the process of referring, evaluating, and approving educational services for preschoolers with disabilities from the Family Court system to the State Education Department (SED). They also established a Committee on Preschool Education (CPSE) in each school district, with responsibility for ensuring that children ages three and four with suspected disabilities are evaluated and offered appropriate placements and/or services. The regulations further allowed for preschool providers to double as evaluation sites, and provided no other evaluation sites for this population.[27] In addition, the legislation extended the IDEA's procedural safeguards to parents of preschoolers. Finally, districts were given two years to phase in services: during 1989 and 1990, children would be served to the extent that program seats and/or services were available; as of September 1991, all eligible children were to receive

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26 New York State Education Law, Sections 4401-4410 and Chapter 243 of the Laws of 1989.

27 NYEL Section 4410(1)(a) and (9).

appropriate services.

The New York City Board of Education (BOE) is responsible for ensuring that educational programs are provided for preschoolers with disabilities in New York City. The Central Board must ensure that preschoolers who might benefit from special education are identified and referred to the appropriate CPSE for evaluation and placement, including those who are homeless. As mandated by State law, each of the 32 community school districts established a CPSE to coordinate the process for children residing in their district. In addition, a Hearing Handicapped Visually Impaired (HHVI) CPSE was established to handle all preschool age children throughout the City suspected of having either a hearing or visually disabling condition. Rather than developing committees of professionals with preschool expertise, the BOE merely funded one new person at each existing Committee for Special Education (CSE) for school-age children to serve as the CPSE administrator.

State Education Department regulations require that the CPSE of the district in which the child resides receive a written referral indicating that the child is suspected of having an educationally disabling condition. The referral may be initiated by either the parent, a physician, an agency representative, a judicial officer or a professional staff member familiar with the child. Upon receipt of the referral, the CPSE must immediately issue the parent(s) a packet of materials which includes the Notice of Preschool Referral, the Notice of Parental Due Process Rights (in their preferred language), the SED approved listing of evaluation sites/preschool providers, and the Consent for Initial Preschool Evaluation. The CPSE must also be available to assist parents in selecting an evaluation site and arranging the evaluation meeting.

Parents use the list of approved evaluation sites to select a site and arrange directly for an evaluation. During the evaluation, parents receive an explanation about the program procedures and their due process rights. They are also asked to sign a consent form which must be returned

to the CPSE by the evaluation site. The CPSE then proceeds with the assessment process which requires a multidisciplinary team approach to identify the child's current levels of performance, including intellectual, social/emotional, physical development, and a determination of functional levels. Within 20 school days of the parent's consent, the evaluation site must conclude the multidisciplinary assessment, identify appropriate services for the child, and forward these materials to the CPSE.

The CPSE must then schedule a Review Meeting, which must take place within 30 school days of the original parental consent. At this meeting, the parent's due process rights as specified in the Notice of Parental Due Process Rights are explained, and a decision is made as to the eligibility of the child for service (i.e., if the child has at least one the identified disabling conditions). This determination is made by the CPSE administrator, a parent of a preschool or elementary school-age child with a disabling condition, a professional who participated in the child's evaluation, and the child's parent(s). Other participants may include a translator, a staff member from the proposed placement, and a family friend or advocate. This team must also discuss the results of the child's assessment (in clear, concise, jargon-free language), the educational needs of the child, and the appropriate program and/or related services for the child's specific needs. Finally, the CPSE must complete for each eligible child an Individualized Education Plan (IEP) in accordance with IDEA.

For children determined to be eligible for a preschool special education program and/or related services, and for whom an appropriate acceptable program/service is available, the placement process can be completed at this meeting. If no appropriate program/service is available, the CPSE issues an "Awaiting Placement Notification" and attempts to find a program to provide the services recommended on the IEP. The New York City Public School's Central Board Support Team (CBST) must determine the appropriateness of the recommended

program/service(s) and issue an authorization letter within 30 school days from the date of the CPSE recommendation.[28]

Barriers to Effective Service Delivery in New York City

Research on the effectiveness of New York City's preschool program indicates that numerous barriers to appropriate educational services confront preschoolers with disabling conditions. We outline barriers to timely and appropriate identification, evaluation, and placement/services.

Barriers to Timely Identification

(a) Eligible children are not being identified

As a result of an inadequate outreach and guidance network many parents whose children could benefit from preschool special education services are not aware that such services exist; many more do not know how to access them properly (New York State Education Department, 1990). In another compliance audit, a Brooklyn CPSE, was admonished for lacking a "comprehensive outreach program to meet the needs of parents who do not have a telephone, are difficult to reach, may need an interpreter, and/or are functionally illiterate" (New York State Education Department, 1991).

The vast majority of preschoolers suspected of having a disability in New York City are referred by regular preschool or day care programs or pediatric medical providers. And yet, day care and preschool services are woefully inadequate. For example, city-subsidized day care centers have spaces for only 45,000 children -- just 12% of those who are eligible (City of New York, 1990). Spaces for infants and toddlers are the most scarce: only about 4% of those seeking care get placed; for preschoolers, only 35% can be placed. In addition, with Head Start programs funded at only half of the authorized level of $5.9 billion, only 19% of New York

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28 N.Y.E.L. Section 4410(5) (e); 8 N.Y.C.R.R. Section 200.4(d).

City's eligible children get served (City of New York, 1992). As a result of these shortages, children in need of services must often depend on pediatric medical providers to link them to educational services. This link, however, has been identified as being weak (Grant, 1992). Finally, children who are not enrolled in a regular preschool program or who are not receiving consistent pediatric care often remain unidentified until they reach school-age.

(b) Children at risk of failure are not eligible for services

In New York State, special education programs and/or services are available only for children who have been diagnosed as having a disabling condition. As a result, thousands of children who are "at risk" of educational failure are excluded. While some schools offer preventive programs, such as Chapter 1 and Head Start, as stated previously not all eligible children are afforded access to these services due to funding limitations. Research indicates that those most at risk for subsequent placement in special education classes are males, living in poverty (i.e., on Medicaid), and having medical complications at time of birth (Goldberg, McLaughlin, Grossi, Tytun, & Blum, 1992).[29] Children who were prenatally exposed to illegal drugs, but who have not yet been diagnosed as having a disabling condition, are also overlooked for services. This policy is clearly inconsistent with longitudinal research on the developmental progress of drug-exposed children. Chasnoff (1992), for example has found that 60%-70% of those who receive care at child development centers do not continue to display problems by age four.

Special education services should be available to all children who currently need them, or

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29 In fact, findings accompanying IDEA exhibit legislative concern for the disproportionate identification and placement of African-American children in special education programs:

"[p]oor African-American children are 3.5 times as likely to be identified by their teacher as mentally retarded than their white counterparts... Although African-Americans represent 12% of elementary and secondary enrollments, they constitute 28% of total enrollments in special education." [20 U.S.C. Section 1409(j)(1)(B)(iii)-(iv)].

are at risk of needing them. Early childhood programs not only maximize the gains that children with developmental disabilities can make, they are also cost effective: In New York City, special education costs approximately $11,500 more per year than general education (New York City Public Schools, 1993). In addition, less than 5% nationally are ever decertified (Autin, Dentzer, & McNutt, 1992). For every child that is prevented from requiring special education, the City and State save approximately $70,000.

Barriers to Timely and Appropriate Evaluation

(a) Parents do not receive adequate notification or assistance regarding the evaluation process

A parent's first impression of available services and/or providers is extremely important in determining whether or not s/he will feel comfortable pursuing services for their child(ren). Therefore, a parent's first encounter with any agency should be as personable as possible. The present method of parent notification is deficient not only because it is mailed to parents who may not be aware that their child was referred for evaluation, but also because of the manner in which the information is written and presented to parents.

The first step after the CPSE gets a referral is to mail a standard notification package, including an extensive listing of New York State approved evaluation sites/programs located within New York City and neighboring counties, and a consent form. The parent is instructed to select a site and to make an appointment at that site prior to returning the consent form. The New York City Public Schools (1992) states that "the current listing is outdated and not user friendly" (p.1); it is complex and provides little substantive description of each site. In addition, the list is provided only in English, making it extremely difficult for non-English speaking parents to choose a site.

The method for notifying parents about the evaluation process has also been criticized by the State Education Department (1990). This audit documented several examples of parents not being provided with the necessary information to ensure their informed consent to evaluation procedures. It also documented several cases where notification of review meetings were mailed without essential information, such as the time, location, and date of the meeting, and persons expected to attend.

Nor do parents receive necessary assistance in identifying an appropriate site, scheduling appointments, or arranging transportation (Weintraub, 1992). This occurs despite the fact that

the New York City Public School's own Standard Operating Procedures Manual states that *"the CPSE chairperson/designee should be available to assist parents in selecting an evaluation site and in arranging the evaluation meeting(s)"* (New York City Public Schools, 1991, p. 2).

Some parents become discouraged and abandon the process. For example, of the 5,869 initial referrals received from July, 1991 to March, 1992, 1792 (31%) were withdrawn (89% of these occurred when the parents or guardian did not select an approved evaluation site) (New York City Public Schools, 1992). These figures suggest that parents may become confused and overwhelmed at the initial referral stage. Yet, parents who are overwhelmed at this point are viewed as "non-compliant" and the case is closed. Furthermore, even Child Welfare Administration case workers, who are trained as advocates, often do not know how to proceed, or in some cases, that they should proceed to secure services for a child (Weintraub, 1992).

Research has yet to explore other barriers that prevent parents of preschoolers from accessing evaluation services. Billings, Durkin, Davidson, O'Connor, & Appell, (1990), however, asked parents to describe the barriers that they confronted in attempting to access early intervention services for their children. They identified the following key barriers: too many forms to fill out; feeling depressed and/or embarrassed and not "up to" going for services; transportation difficulties; language barriers; and immigration worries.

(b) Parental input is often not solicited

Particularly in the preschool years, parents are the best source of information about their children's strengths and weaknesses. They should be considered equal partners with services providers in determining their children's needs and the appropriate services to meet those needs. Sadly, their participation is often repudiated, and in some cases, parents who want additional information regarding evaluation information and procedures in terms that are understandable to them are brushed aside (Sundram, 1992). One parent, for example, reports that when she asked

for an explanation of the scores and terminology used, she was reminded that it was "highly technical information for the interpretation and use of experts only" (personal communication, Valerie Pekar, Advocates for Children of New York).

(c) Evaluation sites are restricted to preschool program providers

Under the present statutory scheme in New York, approved evaluation sites are restricted to special education preschool program sites.[30] Consequently, hospitals, which are often more appropriate for children requiring a medically based inter-disciplinary evaluation are excluded from the evaluation process (Grant, 1992). In fact, developmental evaluations conducted at a hospital must be duplicated by an approved evaluation site. This restriction clearly contributes to the often lengthy delays in evaluation since not enough program sites exist to serve all eligible children.

Arguably, the statutory requirement limiting evaluations to preschool providers also creates an inherent conflict of interest since program providers are reimbursed for evaluations only through tuition add-ons. As a result, they have little, if any, incentive to evaluate children for whom they cannot offer appropriate services.

(d) Additional barriers confront non-English speaking children

Children with Limited English Proficiency (LEP) are disproportionately impacted because most of the approved program providers are not equipped to provide bilingual evaluations or services. This results not only in discriminatory delays in the completion of evaluations, but also in inappropriate evaluations. In fact, because of the shortage of Bilingual evaluators, higher percentages of LEP children are forced to wait longer to be evaluated than English-speaking children. At the end of January, 1993, for example, 32% of the English speaking children who had been identified as potentially eligible for a preschool education program were waiting more

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30 N.Y.E.L. Sections 4410(1) (a) and (9) (b).

than the state mandated 30 days to be evaluated in contrast with 52% of the LEP children (New York City Public Schools, 1993b).

In addition, many LEP children are evaluated by English speaking clinicians. Sometimes, the services of a third party (as translator) are used -- but LEP children are significantly disadvantaged because they routinely receive inappropriate evaluations. Inappropriate evaluations may result in recommendations for the wrong educational program and/or services, or for no services at all.

(e) Sites often deny evaluation services to "aging out" children

Children who are about to "age out" of the preschool system upon their fifth birthday confront additional barriers. Many evaluation sites (and programs), are reluctant to evaluate these youngsters because their waiting lists are already full by the start of the school year, and by the time the lengthy evaluation process is complete the children will soon be eligible for kindergarten. Many programs have indicated that they would prefer to hold their available seats for younger children, who would remain longer in their programs (Weintraub, 1992).

Barrier to Timely and Appropriate Placements

(a) Lengthy delays by the CPSE in evaluating and placing children in programs

Hundreds of preschool age children who have been identified as disabled wait longer than the state-mandated 30 days to be placed in a preschool education program or to otherwise receive appropriate services in the least restrictive environment. New York City Public Schools statistics indicate that 40% of the cases in the CPSE review process in August, 1991 had remained open between 31 and 60 school days as opposed to the 30 days mandated by law (Wooten, 1992). In addition, a New York State Department of Education (1991) audit of a CPSE in Brooklyn, asserted that this CPSE allowed *"some initial cases to remain open for as long as five months."* Overall, 75% of initial cases reviewed by this CPSE had exceeded the 30

school day timeline for review. Weintraub (1992) reports being unable to locate any evaluation site in January 1992 with a waiting period of less than three months. The client in this case, had no alternative but to wait for an appointment.

Data compiled by the New York City Public Schools (1993b), state that: (a) at the end of January, 1993, 38% of all preschool-age children referred for evaluation services waited in excess of the state-mandated 30 days to complete the initial CPSE evaluation and review process; (b) no suitable preschool program was available for 118 disabled children; and (c) of these 118 children, 94 had been waiting more than 30 days for the Board to identify a suitable program. Children who are stuck in the review process for 60 days and then subject to an additional 30 days given to CPSE's to approve the recommendation, miss out on almost five months of valuable services! While non-compliance with timelines can be partially corrected by closer monitoring, the problem of overloaded evaluation sites can only be addressed by increasing the number of sites, as well as the number of qualified personnel to assist in all aspects of the CPSE process. The maximum timeline permitted under existing law and regulations must also be shortened.

Additional delays confront children who have not met the Department of Health requirements (Weintraub, 1992). Children cannot be allowed into a preschool program until their health and immunization histories are recorded on the Department of Health, Division of Day Care medical record. The information must be provided on the requisite form. However, many CPSE's are not aware of this requirement, and do not have copies of this form to provide to parents.

The New York State Education Department (1990) has also documented inaccurate recording of timeline data. HHVI, for example was cited for having *"inappropriate procedures related to the lack of familiarity with what constitutes a referral, specific mandated timelines, as*

well as established standard operating procedures regarding case management and data collection." This audit also reported that *"consistent inaccurate recording"* of timeline data made it impossible for the HHVI/CPSE to *"ensure adherence to established timelines."* The audit further maintained that *"[f]or some students suspected of being handicapped, evaluation in all areas related to the suspected disability were missing i.e., speech and language, occupational therapy, low vision, vision, orientation and mobility, audiological, and physical therapy."* Finally, a 1991 audit of a CPSE in the Bronx, found that occupational therapy services appeared to be recommended *"based on availability at a given site and not on the severity of the problem as documented in the clinical information"* (State Education Department, 1991).

(b) There are not enough programs to serve eligible children

Related to the lengthy delays described above is the shortage of available programs. The pool of available special education preschools in New York City is completely inadequate, particularly in the Bronx (Weintraub, 1992). As a result, children must remain on waiting lists, sometimes for five months or longer. (Weintraub, 1992).

Currently an estimated 8,800 preschoolers receive special education services provided through the Board of Education's collaborative relationship with State-approved private preschool providers (personal communication, Stephen Mittman, Director, Central Based Support Team, NYC Division of Special Education, September, 1993). While school-age children are allowed to obtain private services via a "Nickerson letter," paid for by the SED, if they are not provided timely, appropriate services, preschoolers with special needs have no similar protection.

(c) Additional barriers confront non-English speaking children, and those with more complex needs

For children with additional special needs, appropriate programs are virtually nonexistent. These include bilingual programs for limited English proficient (LEP) children, and programs for children with severe developmental and emotional/behavioral problems. Again, the shortage

of Bilingual program providers results in higher percentages of LEP children waiting longer to be placed than English-speaking children (New York City Public Schools, 1993b). Services to children with severe problems are also hampered by the sharp decrease in the number of community based mental health programs, and the added difficulties accessing available services by poor and disenfranchised families.

(d) Most children are placed in segregated programs

As previously mentioned, IDEA requires that children be served in the least restrictive appropriate environment. Most preschoolers with special needs would benefit from inclusion, in terms of both social interactions and developmental outcomes (cf. Lamorey & Bricker, 1993). But, just as with school-age children, New York City does a very poor job of integrating preschoolers with special needs into the mainstream.[31]

The vast majority (around 95%) of currently served preschoolers in New York City are placed in center-based, segregated preschool programs where they have little, if any, opportunity to interact with non-disabled children. In fact, only 4% of the 510 preschool programs in New York State approved by SED in 1991 afford children the opportunity to receive services in an integrated setting (Sundram, 1992).

The remaining 5% consist of preschoolers with mild to severe handicapping conditions who are in Board of Education Superstart Plus programs or in Head Start. Preliminary data on the Superstart program indicate that up to 40% of all special education participants who were re-evaluated after one year were either decertified or placed in general education classes with related services only (New York City Public Schools, 1993). The policy-related issues cited

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31 New York ranks as the second most segregated special education system in the United States after Washington, D.C. and less than 7% of students receiving special education services in New York are placed full-time in mainstream classes (United States Department of Education, 1992a). African-American and Latino/Hispanic students are more likely to be placed in self-contained classes and programs than are other students (New York City Public Schools, 1990).

most frequently as barriers to inclusion by local and state education directors and state special education preschool staff include: personnel training/standards (cited by 59%); values/attitudes (58%); fiscal contracting (46%); program quality/standards (33%); "approval" of non-public schools (33%); conflicts between agency policies (28%); transportation rules (27%); and curricula/methods (27%) (cf. Smith & Rose 1993). Finally, because virtually all preschool providers in New York City operate programs solely for preschool children with disabilities and often recommend placement in their own programs, children with disabilities are customarily placed in highly restrictive educational environments, contrary to IDEA and New York Education Laws.

Children with special needs, however, cannot be expected to succeed by merely placing them in a regular classroom (Lamorey & Bricker, 1993). This is tantamount to "education by default" according to Grant (1992) who states that "it is not enough just to have a diagnosed handicapped child in the class to call this mainstreaming" (p.4). Instead, their special needs must be met through a variety of supplementary supports and services (cf. Peck, Odom, & Bricker, 1993).

(e) Providers of related services are in short supply

Even when children are placed in programs, they often do not receive mandated special education and related services. This is primarily due to the inadequate pool of related service providers, including speech and occupational therapists. Additional trauma results from the high rate of staff turnover, and from reliance on non-certified, less experienced personnel.

Homelessness as an Additional Barrier to Services

The trauma accompanying the loss of one's home is devastating for children and their families. This trauma is often compounded by dislocation from community, neighbors, services, friends, and schools. Some of these difficulties are described by the Texas State Education Department, (1989).

> *"Homeless children suffer the loss associated with separation from their home, furniture, belongings, and pets; the uncertainty of when they will eat their next meal and where they will sleep during the night; the fear of who might hurt them or their family members as they live in strange and frequently violent environments; the embarrassment of being noticeably poor; and the frustration of not being able to do anything to alleviate their (or their family's) suffering. To assume that a child could push all of such suffering aside to adequately focus on academic tasks, may in many cases be unrealistic"* (p. 13).

Research on the educational needs of homeless preschoolers with disabilities indicates that they are even more likely to be overlooked in the identification process and that they are routinely excluded from accessing available programs and services, including Head Start. Even children who were receiving educational services prior to the loss of their homes generally lose these services upon entering the emergency shelter system.

Additional Barriers Confronting Homeless Children

Rafferty (1991) interviewed each of the 22 community school district coordinators who, at the time of the interviews, were responsible for ensuring the education of approximately 2,992 students, from 3,747 families who were currently residing in 56 emergency shelters in New York City. Every school district with at least 17 families sheltered within its boundaries was represented.

The major findings with regard to homeless preschoolers with disabling conditions, include: (1) efforts are rarely made to place homeless preschoolers into available programs; (2) inconsistent application and selection procedures that ignore the transiency associated with homelessness; (3) preschoolers with disabling conditions are generally not being identified by

Board of Education (BOE) personnel as a result of ineffective or nonexistent outreach; and (4) shelter policies and transportation barriers impede continuity in the provision of educational services.

Other barriers include: social factors (e.g., increasing poverty and the crisis in low income housing); emergency shelter factors (disruptive and unstable placements, inadequate conditions); and family factors (family stress) (cf. Rafferty, under review).

1. Efforts are rarely made to place homeless preschoolers into available programs

As previously mentioned, most children suspected of having a disability are referred by preschool programs or medical providers. Children not identified in either of these ways often must wait until they have been placed in kindergarten or first grade to receive evaluations. Most community school districts in New York City have preschool programs (e.g., Smart Start, Head Start). Project Smart Start, for example, is a half day comprehensive educational preschool program. The components of this program include a developmentally appropriate curriculum, health, social and nutrition services, parent involvement, and staff development. Clearly, homeless preschoolers could benefit from this program. In rare cases, districts reserve a certain amount of slots for homeless children, enabling them to obtain important early intervention services. However, for the most part, district coordinators make no effort to place children into available programs either in the community or in the schools in direct violation of McKinney mandates. According to one district coordinator:

> *"We don't focus on those children. They don't have to go to school. We don't actively recruit preschoolers."*

2. Inconsistent application and selection procedures that ignore the transiency associated with homelessness

Many homeless students are excluded from early childhood education because application and selection is done periodically, and transient families may not be in the right place at the

right time. For example, families in short-stay shelter and hotel placements with children on a waiting list often move before their child's name is called. Thus, they must begin the process again at their next shelter location. In some districts, slots are allocated by lottery in the springtime, preventing most homeless families with preschoolers from even being eligible to apply for available services. Furthermore, those who "win" the lottery and obtain placements are often unable to accept, because the odds are that they will be in a different shelter by the beginning of the school year. The problems are even greater for children who require bilingual preschool programs.

Homeless children are also excluded from Head Start programs which offer the types of comprehensive services that homeless families need, including a holistic approach to education, development, health, and parenting skills. Clearly, homeless families can benefit from being enrolled in a Head Start program that continues once they are permanently housed. Yet, homeless children in NYC are generally not considered eligible to participate in Head Start programs for two major reasons. First, Head Start programs must maintain a minimum average daily attendance to receive their federal reimbursement; homeless children with sporadic attendance as a result of shelter living can jeopardize this funding. Second, Head Start programs are required to provide follow-up services; homeless children are often extremely difficult to follow-up.

3. Preschoolers with disabling conditions are not being identified by Board of Education (BOE) personnel as a result of ineffective or nonexistent outreach

Preschoolers with disabling conditions are generally not being identified by BOE staff who are responsible for the education of homeless children.

> *"We don't know who they are -- nobody tells us and I don't come across them. This is out of our domain. We don't provide services unless children are at least five years old."*

Only two out of 22 district coordinators interviewed indicated that they had a policy and

procedure to ensure that homeless preschoolers suspected of having disabling conditions receive evaluation and program services. A few district coordinators indicated that if parents identify their preschoolers as disabled, they will attempt to intervene. However, most district coordinators stated that they do not intervene, even when they are aware of the existence of preschoolers with disabilities in their designated shelters. One person, for example, indicated that there was a preschooler with Down Syndrome in her facility, but she had no idea how the child got back and forth to school, nor whether or not the parent had received any assistance keeping her child in school. Another discussed a four year old who had been born drug-exposed. The child was hyperactive, and displayed erratic behavior. As a result of the disruptions being caused by the child, the family was administratively discharged from the shelter. Nobody suggested that the child be evaluated for placement into an appropriate educational program.

4. Continuity of educational services is prevented by both shelter policies and transportation barriers.

As a result of inadequate shelter policies in New York City, families are frequently sheltered in a different borough than where they lived in permanent housing. In addition, families are traditionally shuttled from one shelter placement to another. For children with disabilities who were receiving appropriate services, this presents insurmountable difficulties. One coordinator, for example, indicated that s/he had a preschooler with a disabling condition in one shelter, who had previously been in a hospital-based program in a different borough. However, while waiting for the I.E.P. and other pertinent records to arrive, the child was moved to a different shelter. Intervention strategies cannot be implemented when a child is here today and gone tomorrow.

In some cases, preschool providers have officially discharged students from their program due to the transportation vendor's inability/refusal to transport a student "from" or "to" his/her

new location. This is more likely to occur when children are transferred into a different borough. For students who are unable to commute the lengthy distance from their shelter placement to their current school, the process is daunting. First, their records must be transferred. Second, they must be begin the reevaluation process all over again, resulting in endless delays. If they are transferred during this time period, they must begin again.

CONCLUSION

Children in the United States do not have a legal right to housing, to emergency shelter if they lose their home, to adequate nourishment and freedom from hunger, to preventive or curative health and mental health care, to day care, or to quality public preschool education (Edelman, 1992). Without such rights, the consequences are devastating. Preschoolers with disabling conditions, however, do have a legal right to appropriate educational services.

Several federal laws aim to protect children with disabilities from discrimination and to ensure that they receive a free, appropriate public education in the least restrictive environment. Both the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act provide children with disabilities with substantive and procedural rights. Both require states and school systems to take affirmative steps to identify, locate, evaluate, and service all children (in the state or system) who have disabilities and are in need of special education and/or related services. Other federal programs with the potential for enhancing educational opportunities for children with disabilities include: Chapter 1, which provides supplemental financial assistance for educationally disadvantaged children who reside in low income school attendance areas; and Head Start, which provides comprehensive health, nutritional, educational, social and other services primarily to low-income children, age three to five, and their families.

Additionally, the Stewart B. McKinney Homeless Assistance Act entitles homeless children with or without disabilities to receive all of the services, including services provided

under other federal programs, that children with established residences receive. States accepting Title VII-B funds are required to gather information on the number and needs of homeless children; to determine the extent to which homeless children are attending school; to identify barriers preventing homeless children from attending school; and to develop and implement a State Plan to remove barriers and ensure that all homeless children have access to a free public education.

Despite these protections, preschoolers with disabilities in New York City, including those who are homeless are routinely denied access to timely, appropriate services and programs. This fact has devastating consequences for these vulnerable children. Numerous problems plague the CPSE process which is in dire need of immediate regulatory change; it is cumbersome, time consuming, and difficult to access. And even when children finally get placed, they are almost always served in segregated settings, which offer them few, if any, opportunities to interact with their nondisabled peers.

Special education services should be available to all children who currently need them, or are at risk of needing them. Efforts to identify, screen, and follow at-risk children must be improved. At a minimum, at-risk children must receive routine periodic screening, follow-up, monitoring and referral to existing services. Drafting new parental rights which are "user friendly" would enable parents to better understand the process and feel less intimidated. Finally, evaluation and school placement should not be linked.

Legislation, regulation, and attitudes and behaviors of service providers must honor each parent's right to play an active role in their child's education. It is essential that parents receive complete information, and that they are afforded every opportunity to particulate fully in the evaluation or placement processes. The more involved the parents, the more effective the system.

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A Word About Pace University

Pace University, which began in 1906, has an enrollment now of over 15,000 students. It is a private, coeducational institution with academic programs offered on three comprehensive campuses, one in New York City and two in suburban Westchester County. The University is composed of the School of Computer Science and Information Systems, the Dyson College of Arts and Sciences, the School of Education, the Lubin School of Business, the School of Law, and the Lienhard School of Nursing.

With its unique locations in downtown New York in the heart of the financial district and in suburban Westchester County, the site of major corporate headquarters, Pace has maintained close ties to a supportive business community. Pace offers both on-site as well as on-campus programs to many corporations. A major effort of the University is to strengthen its international programs. The University has faculty and student exchange programs with colleges and universities in Canada, Germany, Japan, Spain, China, France, Russia, Portugal, Mexico, Brazil, England, Switzerland, and Pakistan.

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